

106TH CONGRESS
1ST SESSION

H. R. 2121

To ensure that no alien is removed, denied a benefit under the Immigration and Nationality Act, or otherwise deprived of liberty, based on evidence that is kept secret from the alien.

IN THE HOUSE OF REPRESENTATIVES

JUNE 10, 1999

Mr. BONIOR (for himself and Mr. CAMPBELL, Mr. BARR of Georgia, and Mr. CONYERS) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To ensure that no alien is removed, denied a benefit under the Immigration and Nationality Act, or otherwise deprived of liberty, based on evidence that is kept secret from the alien.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Secret Evidence Repeal
5 Act of 1999”.

6 **SEC. 2. FINDINGS.**

7 The Congress makes the following findings:

1 (1) No person physically present in the United
2 States, including its outlying possessions, should be
3 deprived of liberty based on evidence kept secret
4 from that person, including information classified for
5 national security reasons.

6 (2) Removal from the United States can sepa-
7 rate a person from the person's family, may expose
8 the person to persecution and torture, and amounts
9 to a severe deprivation of liberty.

10 (3) Use of secret evidence in immigration pro-
11 ceedings deprives the alien of due process rights
12 guaranteed under the United States Constitution
13 and undermines our adversarial system, which relies
14 on cross-examination as an engine of truth-seeking.

15 **SEC. 3. REPEAL OF SECRET EVIDENCE COURT PROCE-**
16 **DURES.**

17 (a) REPEAL.—Title V of the Immigration and Na-
18 tionality Act (8 U.S.C. 1531–1537) is repealed.

19 (b) CLERICAL AMENDMENT.—The table of contents
20 for such Act is amended by striking the title heading, and
21 the items, relating to title V.

1 **SEC. 4. REPEAL OF USE OF SECRET EVIDENCE IN OTHER**
2 **IMMIGRATION PROCEEDINGS.**

3 (a) ALIEN'S RIGHTS IN PROCEEDINGS.—Section
4 240(b)(4)(B) of the Immigration and Nationality Act (8
5 U.S.C. 1229a(b)(4)(B)) is amended to read as follows:

6 “(B) the alien shall have a reasonable op-
7 portunity to examine all of the evidence against
8 the alien, to present evidence on the alien's own
9 behalf, and to cross-examine all witnesses pre-
10 sented by the Government, and”.

11 (b) BURDEN ON ALIEN.—Section 240(c)(2) of such
12 Act (8 U.S.C. 1229a(c)(2)) is amended by striking the last
13 sentence and inserting the following:

14 “In meeting the burden of proof under subpara-
15 graph (B), the alien shall have access to the alien's
16 visa or other entry document, if any, and any other
17 records and documents pertaining the alien's admis-
18 sion or presence in the United States.”.

19 **SEC. 5. REPEAL OF USE OF SECRET EVIDENCE TO DENY AF-**
20 **FIRMATIVE APPLICATIONS FOR IMMIGRA-**
21 **TION BENEFITS.**

22 (a) IN GENERAL.—Title I of the Immigration and
23 Nationality Act is amended by adding at the end the fol-
24 lowing:

1 **“SEC. 106. REPEAL OF USE OF SECRET EVIDENCE TO DENY**
 2 **AFFIRMATIVE APPLICATIONS FOR IMMIGRA-**
 3 **TION BENEFITS.**

4 “No decision on any immigration benefit (including
 5 the granting of asylum, the withholding of deportation or
 6 removal, adjustment of status, naturalization, or the
 7 granting of temporary protected status) shall be made on
 8 the basis of any evidence not shared with the applicant.”.

9 (b) CLERICAL AMENDMENT.—The table of sections
 10 for such Act is amended by adding at the end of the items
 11 relating to title I the following new item:

“Sec. 106. Repeal of use of secret evidence to deny affirmative applications for
 immigration benefits.”.

12 **SEC. 6. REPEAL OF USE OF SECRET EVIDENCE IN BOND**
 13 **PROCEEDINGS AND JUDICIAL REVIEW OF**
 14 **BOND DETERMINATIONS.**

15 (a) JUDICIAL REVIEW.—Section 236(e) of the Immi-
 16 gration and Nationality Act (8 U.S.C. 1226(e)) is amend-
 17 ed to read as follows:

18 “(e) JUDICIAL REVIEW.—Notwithstanding any other
 19 provision of law, any alien against whom an order con-
 20 cerning detention, release on bond or parole pending or
 21 subsequent to an order of deportability, excludability, or
 22 removability shall be entitled to judicial review thereof in
 23 habeas corpus proceedings to determine whether the At-
 24 torney General is acting in violation of the laws or Con-

stitution of the United States, or is not proceeding with such reasonable dispatch as may be warranted by the particular facts and circumstances of the case.”.

(b) ALIENS’ RIGHTS IN BOND PROCEEDINGS.—Section 236 of the Immigration and Nationality Act (8 U.S.C. 1226) is amended by adding at the end the following:

“(f) ALIENS’ RIGHTS IN BOND PROCEEDINGS.—In proceedings under this section—

“(1) the alien shall have the privilege of being represented, at no expense to the Government, by counsel of the alien’s choosing who is authorized to practice in such proceedings;

“(2) the alien shall have a reasonable opportunity to examine all of the evidence against the alien, to present evidence on the alien’s own behalf, and to cross-examine all witnesses presented by the Government; and

“(3) a complete record shall be kept of all testimony and evidence produced at the proceeding.”.

**SEC. 7. REPEAL OF USE OF SECRET EVIDENCE AGAINST
LAWFUL PERMANENT RESIDENTS, ASYLUM
SEEKERS, AND ALIENS PAROLED INTO THE
UNITED STATES.**

Section 235(c)(1) of the Immigration and Nationality Act (8 U.S.C. 1225(c)(1)) is amended by striking “If” and

1 inserting: “Except in the case of an alien who (i) is a law-
2 ful permanent resident; (ii) was granted advance parole;
3 (iii) was paroled into the United States under section
4 212(d)(5); or (iv) is seeking asylum, if”.

5 **SEC. 8. TRANSITION.**

6 (a) APPLICATION TO DETAINEES.—Not more than
7 30 days after the effective date of this Act, the Attorney
8 General shall, with respect to any alien then detained or
9 whose liberty is otherwise restricted by the Attorney Gen-
10 eral, on the basis in whole or in part of information sub-
11 mitted by the Government ex parte and in camera to an
12 immigration judge, to the Board of Immigration Appeals
13 or to any court—

14 (1) provide such alien a copy or transcript of
15 such information, and provide the alien with a rede-
16 termination of bond (or a reconsideration of the
17 terms of custody, as the case may be) based on evi-
18 dence disclosed to the alien and the alien’s response
19 to such evidence; or

20 (2) withdraw from the record of any pro-
21 ceedings involving such alien any and all evidence,
22 testimony, or other information submitted by the
23 Government ex parte and in camera to the immigra-
24 tion judge, the Board of Immigration Appeals, or to
25 any court, as the case may be, and—

1 (A) release such alien if such alien is de-
2 tained; and

3 (B) cease all restrictions on the liberty of
4 such alien if such restrictions exist,
5 unless detention is warranted solely on the basis of
6 evidence disclosed to the alien; or

7 (3) release such alien.

8 (b) APPLICATION TO ALIENS SEEKING IMMIGRATION
9 BENEFITS.—Not more than 30 days after the effective
10 date of this Act, the Attorney General shall, with respect
11 to any alien physically present in the United States whose
12 application for an immigration benefit is or was opposed
13 by the Government on the basis in whole or in part of
14 information submitted by the Government ex parte and
15 in camera to an immigration judge, to the Board of Immi-
16 gration Appeals, or to any court—

17 (1) provide such alien a copy or transcript of
18 such information and a reasonable opportunity to re-
19 spond to such information, and grant or deny the
20 application or reopen the proceedings and afford the
21 alien de novo reconsideration of the application, as
22 the case may be, based solely on evidence in the pub-
23 lic record; or

24 (2) withdraw from the record of any pro-
25 ceedings involving such alien any and all evidence,

1 testimony, or other information submitted by the
2 Government ex parte and in camera to the immigra-
3 tion judge, the Board of Immigration Appeals, or to
4 any court, as the case may be, and grant or deny
5 the application or reopen the proceedings and afford
6 the alien de novo reconsideration of the application,
7 as the case may be, based solely on evidence in the
8 public record; or

9 (3) grant the application.

10 (c) TERMINATION OF PROCEEDINGS.—In the case of
11 an alien in immigration proceedings as of the effective
12 date of this Act conducted under title V of the Immigra-
13 tion and Nationality Act—

14 (1) such proceedings are terminated as of the
15 effective date of this Act without prejudice to the
16 Attorney General or the alien; and

17 (2) the Attorney General may, in his or her dis-
18 cretion, commence de novo removal proceedings
19 within 10 days thereafter under section 240 of the
20 Immigration and Nationality Act (8 U.S.C. 1229a).

21 **SEC. 9. REGULATIONS.**

22 The Attorney General shall promulgate regulations,
23 including regulations governing applications for asylum,
24 withholding of deportation or removal, adjustment of sta-
25 tus, naturalization, temporary protected status, and relief

1 from deportation, exclusion, or removal to implement this
2 Act not more than 90 days after the effective date of this
3 Act.

4 **SEC. 10. EFFECTIVE DATE.**

5 The amendments made by this Act shall take effect
6 on the date of the enactment of this Act and shall apply
7 to all aliens without regard to the date of arrival, admis-
8 sion, entry, or parole into the United States.

○